

A DECLARATION

Of His HIGHNES COUNCIL in SCOTLAND,

For the GOVERNMENT thereof;

Concerning his Highnesse and the Council's ORDER of the 15th of April, 1656. For the Relief of Debtors who are willing to satisfie their just Debts; And for the Moderating the Rigor of Comprizings, and the Severity of Proceedings by Creditors against Debtors in SCOTLAND.

It hath been the usual practice of such Authorities, who were either sensible of, or concerned in, the Good of the People under their care, or the Peace of the Commonwealth, after long and destructive wars, to set down some such equitable and conscientious Rules for satisfaction of Debts between Party and Party, as might probably extinguish new occasions of disturbance, after the determination of the old, and might with respect to Particulars have also a due regard unto the Publick; And, in order to that good end, even in this Nation, in the time of King James the third, the People thereof being, by reason of preceding troubles, much exhauſted of Moneys, It was Enacted in the fifth Parliament of the said King, That where the Mobables or personal Estate of any Debtor was not competent to satisfie his Debts, his Lands should be sold to the avail of the Debt, and the Creditor paid thereout; And if no Buyer or Purchaser was found, then that a Jury of the most dis-interested and worthiest persons of the Shire should apprise the said Lands, which then were to be assigned to the Creditor to the avail of the Debt, as may more fully appear in the said Act: which Law seems to be grounded both upon Justice and Prudence; for, as on the one side no one could rationally complain, that he was paid in Land instead of Money, when nothing but Land was to be found to make payment in: So, on the other side, it had not been safe for those intrusted with the Publick Peace, to have endangered the Quiet thereof, by permitting particular persons to thrust many into disorders in prosecuting impossibilities, and others for not acting them. Besides, the ultimate act of the Law, as to giving of Satisfaction, where the Debtor hath no personal Estate or Mobables, is, To comprize his Lands: so that this manner of payment differs not in the quality, but in the degrees of the satisfaction; and is nothing else but in effect by competent Judges, to share between both Debtor and Creditor the production of a publick calamity.

The Lords of the Sessions of this Nation, by the rules or practice of their Court, have (before ever the Authority of England was embraced and settled here) frequently altered and mitigated the Rigor of Comprizings, and have taken off the benefit of Priority in Diligence, and divided proportionably the Estate of the Debtor between the Creditors, as is evident in the Laird of West-Nisbets and Mr. John Rindes cases, besides many others, too tedious to be enumerated; the ground whereof seems to be clear: For, though the benefit of Priority in Diligence in Comprizing, is, what all Creditors may consider as their advantage, yet when one hath obtained it (as but one can obtain it) then it turneth usually to the prejudice of all, for the rest are commonly thereby excluded for a long time, if not for ever; so that what is plausible to all in the Notion, is too frequently ruinous to all (but one) in the Practice: Therefore the Judges, who considered the good of many before the good of one, and what is good in substance, more then in shew, by the wise latitude left unto them, have acted, especially in cases of urgency, according to the highest humane Law; nay, according to that for which all humane Laws are, Even the good and safety of the People: And if only for Conscience and Equity sake such measure hath been usually extended to some in cases of great Exigency, much more ought it to be practized to many, if the condition of those many be parallel to those few, since to the equality of the case in point of right there is the additional argument of contributing to the Publick Quiet, which, if disturbed, may involve the Creditors into higher prejudice, than by their prosecution they can expect advantage; Besides, it seems but equal that the Estate which was the foundation of all the Credit, should be equally divided between all the Creditors.

Since, by what hath been said, it is evident that particular persons by an equitable and conscientious proceeding, have got reversed the Priority of Diligence in Comprizing, and brought the Debtors whole Estate to a proportionable division amongst the Creditors: It cannot but be reputed a signal Justice and Mercy, to put (as much as well may be) all concerned therein, as well Creditors as Debtors, into a capacity of receiving speedily and cheaply that benefit, which some individual persons have already enjoyed, and may hereafter enjoy with cost and expence of time.

His Highnesse therefore seriously minding the Good and Quiet of the Subjects of this Nation, the practice of other Authorities, aswell as of some preceding ones of this Country, and yeelding to none of his Predecessors in his care of, and tenderesse towards those under his Government; As also considering how after long and bloody confusions many things are necessary to be performed for a general good, which possibly in a confirmed Peace might not be altogether so requisite; Hath appointed his Council here to cause to be Proclaimed his and the Councils Order of the 15. of April 1656. For the Relief of Debtors who are willing to satisfie their just Debts, and for the moderating of the Rigor of Comprizings, and the Severity of Proceedings by Creditors against Debtors in SCOTLAND: Wherein are contained such just and conscientious Rules for rendering more clearly practicable, what relates to differences between Creditors and Debtors, that amongst many eminent good fruits of his Government, that Order will not be esteemed the least. Which said Order of his Highnesse and Council, all Persons within this Nation are required to take due notice of, and give obedience thereunto. And the Commissioners for Administration of Justice are to take the best and speediest care they can to put the said Order in such effectual execution, that all persons concerned therein may enjoy the benefit thereof. Given at Edinburgh the 22. day of May, 1656.

Signed in the Name, and by Order of the Council.

BROGHILL, President.

Thursday the 22. day of MAY, 1656.

At his Highnesse Council in EDINBURGH,

Ordered, That the above Declaration, be forthwith Printed and Published.

EMANUEL DOWNING, Cl. of the Council.

EDINBURGH, Printed by Christopher Higgins, in Hart-Close, over against the Trone-Church, 1656.

V D E C T V B W I O I A